

REMARKS

Applicant respectfully requests reconsideration of the instant application in view of the amendments, herein, and the following remarks:

The following claims are *pending*: 1, 2, 4-10 and 12-34.

The following claims are *independent*: 1, 33 and 34.

The following claims have previously been cancelled without prejudice or disclaimer: 3 and 11

Priority and Specification

The Examiner asserts on page 2 of the Office Action that with regard to provisional application 60/390,459, Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. §119(e) and has required that reference to this provisional application be deleted. Applicant has amended the Specification to address this issue. The Examiner has also objected to this Specification on this basis. Accordingly, Applicant submits this requirement has hereby been satisfied or otherwise rendered moot and respectfully request that the objection be withdrawn.

Double Patenting Rejection

Claims 1, 33 and 34 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over all the independent claims of the U.S. Patent No. 7,548,883; claims 1, 10, 20 and 21 of copending Application No.

10/456,000; and claims 1, 12, 17 and 21 of copending Application No. 10/464,601. Applicant respectfully submits that since the alleged conflicting claims have not in fact been patented, this obviousness-type double patenting rejection is made provisional. In response, Applicants respectfully request that the provisional double-patenting rejection be held in abeyance due to the provisional nature of the rejection until one of the applications is allowed. Upon notice of otherwise allowable subject matter, applicants will address the rejection. Applicants note that it is proper when dealing with otherwise allowable subject matter in co-pending applications to withdraw a provisional rejection in the most advanced application, allow it to issue, and make a (non-provisional) rejection in the remaining application.

Moreover, Applicant files concurrently herewith a Terminal Disclaimer to overcome the nonstatutory obviousness-type double patenting rejection over U.S. Patent No. 7,548,883. Accordingly, Applicant respectfully requests withdrawal of this rejection.

Allowable Subject Matter

The Office Action indicates that claims 1-2, 4-10 and 12-34 are allowable if a valid terminal disclaimer is filed. Applicant is concurrently filing a terminal disclaimer and respectfully requests withdrawal of the rejection(s) and/or objection(s), and allowance of all pending claims.

Authorization

Applicant hereby authorizes and requests that the Commissioner charge any additional fees that may be required for consideration of this and/or any accompanying and/or necessary papers to Deposit Account No. 03-1240, Order No. 17209-314CP1. In the event that an extension of time is required (or which may be required in addition to that requested in a petition for an extension of time), Applicant requests that the Commissioner grant a petition for an extension of time required to make this response timely, and, Applicant hereby authorizes and requests that the Commissioner charge any fee or credit any overpayment for such an extension of time to Deposit Account No. 03-1240, Order No. 17209-314CP1.

In the event that a telephone conference would facilitate examination of the application in any way, Applicant invites the Examiner to contact the undersigned at the number provided.

Respectfully submitted,
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